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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

8 LAMONT HOWARD,
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10 *Petitioner,*

3:16-cv-00665-HDM-VPC

11 vs.

ORDER

12 HAROLD WICKHAM, *et al.*,

13 *Respondents.*

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15 Following upon the entry of appearance (ECF No. 12) by the Federal Public Defender,
16 IT IS ORDERED that the Federal Public Defender, through Jeremy C. Baron, Esq., is
17 appointed as counsel for petitioner pursuant to 18 U.S.C. § 3006A(a)(2)(B). Counsel will
18 represent petitioner in all federal proceedings related to this matter, including any appeals or
19 *certiorari* proceedings, unless allowed to withdraw.

20 IT FURTHER IS ORDERED that petitioner shall have until up to and including **ninety**
21 **(90) days** from entry of this order within which to file an amended petition and/or seek other
22 appropriate relief. Neither the foregoing deadline nor any extension thereof signifies or will
23 signify any implied finding as to the expiration of the federal limitation period and/or of a basis
24 for tolling during the time period established. Petitioner at all times remains responsible for
25 calculating the running of the federal limitation period and timely asserting claims, without
26 regard to any deadlines established or extensions granted herein. That is, by setting a
27 deadline to amend the petition and/or by granting any extension thereof, the Court makes no
28 finding or representation that the petition, any amendments thereto, and/or any claims

1 contained therein are not subject to dismissal as untimely. See *Sossa v. Diaz*, 729 F.3d
2 1225, 1235 (9th Cir. 2013).

3 IT FURTHER IS ORDERED that respondents shall file a response to the amended
4 petition, including potentially by motion to dismiss, within **sixty (60) days** of service of an
5 amended petition and that petitioner may file a reply thereto within **thirty (30) days** of service
6 of the answer. The response and reply time to any motion filed by either party, including a
7 motion filed in lieu of a pleading, shall be governed instead by Local Rule LR 7-2(b).

8 IT FURTHER IS ORDERED that any procedural defenses raised by respondents to
9 the counseled amended petition shall be raised together in a single consolidated motion to
10 dismiss. In other words, the Court does not wish to address any procedural defenses raised
11 herein either in *seriatum* fashion in multiple successive motions to dismiss or embedded in
12 the answer. Procedural defenses omitted from such motion to dismiss will be subject to
13 potential waiver. Respondents shall not file a response in this case that consolidates their
14 procedural defenses, if any, with their response on the merits, except pursuant to 28 U.S.C.
15 § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If respondents do seek
16 dismissal of unexhausted claims under § 2254(b)(2): (a) they shall do so within the single
17 motion to dismiss not in the answer; and (b) they shall specifically direct their argument to the
18 standard for dismissal under § 2254(b)(2) set forth in *Cassett v. Stewart*, 406 F.3d 614,
19 623-24 (9th Cir. 2005). In short, no procedural defenses, including exhaustion, shall be
20 included with the merits in an answer. All procedural defenses, including exhaustion, instead
21 must be raised by motion to dismiss.

22 DATED: October 19, 2017.
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26 HOWARD D. MCKIBBEN
27 United States District Judge
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